

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application of

Applicant : Petrus Besselink
Serial No. : 10/528,044
Filed : March 16, 2005
Title : VASCULAR FILTER WITH IMPROVED STRENGTH AND
FLEXIBILITY
Docket No. : BES 0009 PA
Examiner : Elizabeth Houston
Art Unit : 3731
Conf. No. : 2774

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

EFS Web Electronic Submission December 2, 2010

Sir:

APPLICANT'S REPLY BRIEF

This reply brief is being filed in response to the Examiner's Answer mailed October 27, 2010, and to respond to certain statements and arguments made therein. Pursuant to 37 CFR §41.41, entry and consideration of this Reply Brief is requested. Also pursuant to 37 CFR §41.43, the Examiner is requested to acknowledge receipt and entry of the reply brief.

The Examiner cannot ignore the meaning of term "membrane" in the claims on appeal. As explained by the Applicant in his main Brief on Appeal, the claimed device relates a composite medical device that can be inserted into arteries, veins and related body lumen, where the composite nature of the device stems from the recitation of reinforcement fibers coupled to a membrane. MPEP 2111 clearly requires not an unmoored "broadest reasonable interpretation" but a broadest reasonable interpretation that is *consistent with the specification*. The originally-filed specification is replete with discussion of the thin, flexible, sheet-like nature of the membrane used to form a composite with the reinforcing fiber (see, for example the specification at page 1, lines 5-6 and page 6, lines 3-4 (describing "a flexible thin membrane"), page 1, lines 15-16 (that in "order to have a good flexibility, the membrane is made extremely thin" and that absent the presently-included

reinforcing fibers, such a membrane "would create the risk that the membrane could tear easily"), page 1, lines 24-25 (describing "a filter membrane or mesh that does the actual filtering work"), page 6, lines 11-12 ("the membrane is made extremely thin . . . [such that t]earing of the membrane is prevented by embedding in the filter membrane thin filaments of a material with high strength"), page 7, lines 11-13 (that the "resulting composite membrane can have extreme flexibility and elasticity in certain directions, combined with limited deformation, high strength and prevention of crack propagation through the membrane material"), page 15, line 21 (likening the membrane to "a thin sheet"), page 16, line 5 ("a filter sheet"), page 29, line 1 ("highly flexible filter membrane"), page 29, lines 4-6 (the "reinforcement is integrated with the membrane to create a composite structure with very flexible membrane areas where the blood is filtered"), page 31, lines 1-2 ("the reinforcement enables the membrane to be made much thinner than known membranes"), page 32, lines 19-21 (noting the tissue-like nature of the membrane), page 34, line 25 (indicating that the membrane is smooth-folding), page 36, lines 8-9 (that the use of reinforcement fibers "makes it possible to reduce the thickness of membrane"), page 43, line 26 (that membranes such as those of the present invention are used "where minimal thickness and/or high strength are required"))).

The above examples make manifest the Applicant's intention to claim an endoluminal-compatible medical device made from a fiber-reinforced membrane. In previous Office Actions, the Examiner candidly noted that the primary reference relied upon (US Patent 6,371,971 to Tsugita et al.) fails to include fiber reinforcement coupled to a membrane to form a composite structure, and then relied upon the secondary teaching of US Patent 5,836,962 to Gianotti to ostensibly rectify such deficiency. The only way the Examiner's "broadest reasonable interpretation" of the so-called membrane of Gianotti can be legitimate is if it is made consistent with the original understanding in the Applicant's original specification as discussed in the previous paragraph. Recourse to Gianotti reveals no indication of a membrane, sheet or related structure as part of its composite teaching. The Examiner's resort in numbered paragraph (10) of the Answer to passages within Gianotti to the supposed adjustability of the reinforcing fiber and the encasing support inside which the fibers are embedded (for example, at column 6, lines 46-63) is unavailing, as such do nothing to even remotely teach or suggest the claimed membrane as part of a composite structure.

The Examiner acknowledges the above MPEP stricture, yet maintains that the teaching of Gianotti is sufficient to be read upon by the claim limitation of a membrane, noting with particularity at paragraph (10) of the Answer that "the words of the claim must be given their plain meaning *unless the plain meaning is inconsistent with the specification*" (emphasis in the original). The Examiner then states that "the plain meaning interpretation is not inconsistent with the specification and thus applicable." By logical construct, a plain meaning that is not inconsistent with the specification that is inconsistent with the structure of Gianotti would render Gianotti inapplicable. *Webster's Ninth New Collegiate Dictionary* defines a membrane as "a thin soft pliable sheet or layer". Each of these attributes is stressed in the above-cited passages of the original specification. As such, the Applicant agrees that the use of the term "membrane" in the original specification is consistent with the commonly-accepted meaning, and that concomitantly such use does not amount to improperly reading limitations from the specification into the claims. By way of contrast, the encasing device (shown in FIGS. 3 through 5 and described as support 3 in Gianotti) exhibits none of these features, showing a relatively thick, robust cylindrical structure. The Examiner's inability to reconcile the structure depicted in Gianotti with either the present use of the term "membrane" in the original specification or its plain dictionary meaning means that her continued reliance upon Gianotti as a way to correct the deficiencies of the primary teaching of US Patent 6,371,971 to Tsugita et al. is misplaced, and therefore fails to establish a prima facie case of obvious that requires, *inter alia*, that all of the claim limitations must be taught or suggested.

The Applicant respectfully submits that the Examiner's Answer, taken in conjunction with the Office Action of March 24, 2010, is insufficient to maintain the validity of the present rejection, and that this Board reverse the rejections of all of the appealed claims.

Respectfully submitted,
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